

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GUY ROOT)	
Claimant)	
VS.)	
)	Docket No. 265,692
FORD COUNTY)	
Respondent)	
AND)	
)	
EMPLOYERS MUTUAL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent appeals the October 31, 2002 Decision of Administrative Law Judge Pamela J. Fuller. Claimant was awarded a 16 percent impairment to the body as a whole as a result of upper extremity difficulties developed while working for respondent.

Respondent contends claimant did not suffer accidental injury arising out of and in the course of his employment, but that his condition is, instead, a congenital condition, developed over years as the result of claimant's osteoarthritis. Respondent further disputes claimant's contentions that he had just cause for notifying respondent of the ongoing problems more than ten days after claimant's last date of employment with respondent. The Appeals Board (Board) heard oral argument on May 6, 2003. Gary M. Peterson appeared as Appeals Board Member Pro Tem for the purposes of this appeal.¹

APPEARANCES

Claimant appeared by his attorney, Henry A. Goertz of Dodge City, Kansas. Respondent and its insurance carrier appeared by their attorney, James M. McVay of Great Bend, Kansas.

¹ Board Member Gary M. Peterson retired from the Board in March 2003. As of the date of oral argument, no replacement had been named.

RECORD AND STIPULATIONS

The Board has considered the record and adopts the stipulations contained in the Decision of the Administrative Law Judge.

ISSUES

- (1) Did claimant suffer accidental injury arising out of and in the course of his employment with respondent?
- (2) Did claimant provide timely notice of accident as is required by K.S.A. 44-520 (Furse 1993)? If timely notice was not provided, did claimant have just cause for so failing to timely notify respondent of the accident?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record filed herein, the Board finds the Decision of the Administrative Law Judge should be affirmed.

Claimant alleges accidental injury to his bilateral upper extremities through his last day worked, April 21, 2000. Claimant, a patrol officer for Ford County, worked for respondent beginning in 1984. His duties included driving a patrol car several thousand miles per month, investigating criminal activities and preparing the paperwork associated with those investigations. Over the years, claimant began developing upper extremity problems which, at various times, were diagnosed as generalized arthritis, osteoarthritis, ulnar neuritis, cubital tunnel syndrome, chondromalacia and ultimately carpal tunnel syndrome bilaterally. Claimant was treated conservatively by his family doctors through his last day worked. Claimant was forced to terminate his employment with respondent on April 21, 2000, as he had developed hand tremors, which prevented him from qualifying with a sidearm, thereby eliminating his ability to perform his job duties with respondent. Claimant left respondent's employment and began his own business, which he continues to this time. Claimant acknowledges that the income generated from this business is comparable to that which he was receiving with respondent and he is, therefore, not entitled to a permanent partial general disability under K.S.A. 1999 Supp. 44-510e, but is instead limited to a permanent partial disability based on his functional impairment.

Claimant was examined and/or treated by several doctors. The Board in reviewing the medical reports of the various health care providers, finds the opinion of Philip R. Mills, M.D., the most credible regarding claimant's condition and the cause of his problems. Dr. Mills found claimant to suffer bilateral carpal tunnel syndrome and bilateral Guyon's canal syndrome. Dr. Mills went on to testify that in his opinion, claimant's employment with

respondent caused or aggravated the condition, resulting in a 16 percent impairment to the body as a whole.

The Board acknowledges other opinions are in the record dealing with the ongoing cause of claimant's problems. However, the opinions expressed by George Lucas, M.D., John McMaster, M.D., and Tony Luna, M.D., in some ways, support Dr. Mills' position and, in other ways, contradict it. The Board, nevertheless, finds the opinion of Dr. Mills to be the most credible regarding the cause of claimant's ongoing problems. The Board, therefore, finds claimant has proven that he suffered accidental injury arising out of and in the course of his employment with respondent through a series of accidents culminating on April 21, 2000.

The more difficult issue presented by respondent deals with whether claimant provided timely notice of accident and, if not, whether there was just cause for his failure to do so.

K.S.A. 44-520 (Furse 1993) obligates that notice be provided to the employer within ten days after the date of accident, stating the time, place and particulars thereof. The ten-day notice provision is not a bar to proceedings under the Workers Compensation Act "if the claimant shows that a failure to notify under this section was due to just cause"

The phrase "just cause" was not defined by the Kansas legislature. However, the Board has listed certain factors which should be considered when determining whether just cause exists. Those factors include:

- (1) The nature of the accident, including whether the accident occurred as a single, traumatic event or developed gradually;
- (2) Whether the employee is aware they have sustained either an accident or an injury on the job;
- (3) The nature and history of claimant's symptoms;
- (4) Whether the employee is aware or should be aware of the requirements of reporting a work-related accident, and whether the respondent has posted notices required by K.A.R. 51-13-1 (currently K.A.R. 51-12-2).²

In this instance, claimant acknowledges that he provided no notice to respondent of an ongoing upper extremity difficulty while working. The diagnosis of carpal tunnel

² *Russell v. MCI Business Services*, No. 201,706, 1995 WL 712402 (Kan. WCAB Oct. 9, 1995).

syndrome was not tentatively made until May 16, 2000, several weeks after claimant terminated his employment. Additionally, claimant was not advised that there was a work-related connection to his carpal tunnel syndrome until his May 30, 2000 conference with Karen Bruck, M.D., his then-treating physician.

With an accident date of April 21, 2000, and a notice date to respondent of approximately June 1, 2000, it is clear claimant has exceeded the ten-day limitation set forth in K.S.A. 44-520 (Furse 1993). The Board must, therefore, determine whether just cause existed for this delayed notification. The factors listed above in *Russell* support claimant's contention that there was just cause for his failure to timely notify respondent of the accident. Claimant's condition developed over a several-year period and was, at times, commingled with ongoing non-work-related conditions, as above discussed. Claimant was unaware until either May 16 or May 30 that he had sustained an accident or injury on the job. After being informed on May 30, 2000, that he definitely had carpal tunnel syndrome and it was related to his work, claimant immediately notified respondent of the ongoing problems and their work-related nature. The Board finds based upon the criteria set forth in *Russell*, that claimant had just cause for his failure to notify respondent within ten days of his work-related injury, thereby extending the notice period to 75 days from the date of accident. As the first of June is within 75 days of the April 21, 2000 date of accident, the Board finds that claimant did timely notify respondent of his accidental injury, thereby satisfying the requirements of K.S.A. 44-520 (Furse 1993).

The Board, therefore, finds that the Decision of the Administrative Law Judge granting claimant a 16 percent impairment to the body as a whole for injuries suffered through April 21, 2000, should be affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Decision of Administrative Law Judge Pamela J. Fuller dated October 31, 2002, should be, and is hereby, affirmed, and the claimant, Guy Root, is granted an award against the respondent, Ford County, and its insurance carrier, Employers Mutual Insurance Company, for an accidental injury occurring through a series of injuries culminating on April 21, 2000, and based upon an average weekly wage of \$697.46. Claimant is awarded a 16 percent impairment to the body as a whole, which computes to 66.4 weeks of permanent partial disability compensation at the statutory maximum rate of \$383 per week totaling \$25,431.20. As of the date of this Award, the entire amount would be due and owing in one lump sum minus any amounts previously paid.

In all other regards, the Decision of the Administrative Law Judge is affirmed insofar as it does not contradict the findings and conclusions contained herein.

IT IS SO ORDERED.

Dated this ____ day of October 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Henry A. Goertz, Attorney for Claimant
James M. McVay, Attorney for Respondent
Pamela J. Fuller, Administrative Law Judge
Paula S. Greathouse, Director